

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-58582; File No. SR-Phlx-2008-66)

September 18, 2008

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Quotation Size Decrementation

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 16, 2008, the NASDAQ OMX PHLX, Inc. (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by Phlx. Phlx filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Section 19(b)(1) of the Act<sup>5</sup> and Rule 19b-4 thereunder,<sup>6</sup> proposes to amend Exchange Rule 1082, Firm Quotations, to reflect a change to its fully electronic trading platform for options, Phlx XL,<sup>7</sup> in which automatic executions will decrement the Exchange’s disseminated size by the amount of the automatic execution.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 15 U.S.C. 78s(b)(1).

<sup>6</sup> 17 CFR 240.19b-4.

<sup>7</sup> See Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 (August 3, 2004) (SR-Phlx-2003-59). [sic]

The text of the proposed rule change is available on the Exchange's Website at [http://www.phlx.com/regulatory/reg\\_rulefilings.aspx](http://www.phlx.com/regulatory/reg_rulefilings.aspx).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enhance the ability of Exchange Streaming Quote Traders ("SQTs"),<sup>8</sup> Remote Streaming Quote Traders ("RSQTs"),<sup>9</sup> non-SQT ROTs,<sup>10</sup> and specialists (collectively, "Phlx XL participants") to better manage risk by modifying the Phlx XL system such that when a trade occurs, the Phlx XL system will decrement the quote size by the

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<sup>8</sup> An SQT is a Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. See Exchange Rule 1014(b)(ii)(A).

<sup>9</sup> An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. See Exchange Rule 1014(b)(ii)(B).

<sup>10</sup> A non-SQT ROT is an ROT who is neither an SQT nor an RSQT. See Exchange Rule 1014(b)(ii)(C).

number of contracts traded in the affected option series on the side of the market that has traded (i. e., bid size for sell transactions and offer size for buy transactions).

Phlx XL currently does not decrement quotation size in real time. Instead, a Phlx XL participant has control over his or her quotation size and can refresh the size (and price) for which he or she is firm at the disseminated price. Phlx XL participants have experienced situations where they execute more contracts at a particular price than they intended due to the fact that Phlx XL currently does not decrement quote size in real time.

The following example illustrates the issue that the proposed system change would solve:

A Phlx XL participant submits an electronic quotation (a bid) to buy 100 contracts. Under the current system functionality, if a single trade of 100 contracts to sell interacts with that bid for 100 contracts, all 100 contracts will be executed and the Phlx XL participant's quotation will be exhausted and removed from the market place until that Phlx XL participant refreshes his or her quotation.<sup>11</sup>

If, however, a single trade of 100 contracts to sell interacts with that bid for anything less than its full size, the Phlx XL system currently does not decrement the size of the bid, and the bid is still firm for the full original size of 100 contracts. For example, a single trade of 90 contracts occurs on the bid price, all 90 contracts would be executed automatically, but the disseminated size of the quotation will continue to be 100 contracts. Phlx XL participants have experienced situations where a quotation could be for a size of 100 contracts and an execution occurs for 99 contracts, followed by an additional execution of 100 contracts at the same price before the Phlx XL participant can revise his or her quotation in the affected series, for a total execution of 199 contracts when the quotation was only intended to be for a size of 100 contracts at the

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<sup>11</sup> See Exchange Rule 1082(a)(ii)(B)(1).

disseminated price. The Exchange believes that this aspect of the current system exposes Phlx XL participants to undue risk respecting the size for which they are firm at a particular price in a particular option series.

Accordingly, under the proposal, every trade executed automatically in the Phlx XL system would cause the Exchange's disseminated size to be reduced by the number of contracts traded in the affected series at the disseminated price. Receipt of a revised quote from the affected Phlx XL participant would reset the price and size for that series.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>13</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing Phlx XL participants with additional protection from exposure to undue market risk through the real-time decrementation of the Exchange's disseminated size.

The Exchange further believes that the proposed rule change is consistent with the Act because the risk protection afforded Phlx XL participants should encourage them to quote options series with greater size, adding liquidity to the Exchange's markets against which customers can trade.

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>16</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>17</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to waive this requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).

delay is consistent with the protection of investors and the public interest. The Commission notes that under the proposal, the Exchange's disseminated size should accurately reflect revised quotation sizes based on automatic executions through Phlx XL in real time. Accordingly, the Commission designates that the proposed rule change become operative immediately.<sup>18</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2008-66 on the subject line.

##### Paper comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2008-66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2008-66 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Florence E. Harmon  
Acting Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).